

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TOTAL TOOL SUPPLY INC,

Plaintiff,

v.

Case No. 11-C-1106

OLK CONSTRUCTION and MATTHEW T OLK,

Defendants.

ORDER FOR JUDGMENT

This matter is before the Court on the plaintiff's Motion for a Default Judgment. Plaintiff is entitled to judgment by default because the defendant, after having been properly served with the summons and complaint, has failed to respond within the time allowed. The Clerk has already entered the default, and Plaintiff filed a motion for entry of judgment for the principal amount of \$90,012.69 for goods sold and delivered, and an additional amount of \$11,807.65 for attorney fees. Plaintiff alleged that its contract with Defendant entitled to costs of collection, including reasonable attorney fees. Noting that the basis of the attorney fee request was not clear from the record, the Court directed Plaintiff to supplement the record. Plaintiff has now done so and now seeks attorney fees in the amount of \$16,202.28, together with costs of \$420. Plaintiff states that the basis of the fee request is a Contingency Fee Agreement it entered into with its attorney under which it agreed to pay a contingency fee at a rate of 18% of the outstanding principal.

The contract between Plaintiff and Defendant called for Defendant to pay reasonable attorney fees. While it may make sense for Plaintiff to enter into a contingency fee arrangement

with its own attorney to collect the amount owed by Defendant, a fee of 18% of the principal amount simply for obtaining judgment by default is not reasonable. If Plaintiff incurs further costs in attempting to execute its judgment against Defendant, it will be entitled to additional attorney fees. But Plaintiff's agreement with its attorney is not binding on Defendant. The amount Defendant is contractually obligated to pay as attorney fees is determined by multiplying the amount of time reasonably expended by counsel on the case by a reasonable hourly rate.

Although Plaintiff's counsel does not indicate the amount of time spent on the matter, it would appear that \$2,500 is an adequate fee. Accordingly, the Court determines attorney's fees in the amount of \$2,500 plus costs of \$420.00 for a total of attorney's fees and costs in the amount of \$2,920.00. The clerk is directed to enter judgment in favor of Plaintiff and against Defendant for the principal amount of \$90,012.69 together with attorney fees and costs of \$2,920 for a total amount of \$92,932.69.

SO ORDERED this 22nd day of March, 2012.

s/ William C. Griesbach
William C. Griesbach
United States District Judge